

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

TESTING TECHNOLOGIES, INC.

and

MG PREP, INC.,

Plaintiffs,

v.

MO MEDIA, LLC, PAUL OWENS, and  
JOHN DOES 1-10,

Defendants.

ECF

Civil Action No. 07 Civ 7360

**REPLY DECLARATION OF PAUL OWENS**

**PAUL OWENS** declares and says as follows:

1. I am the co-owner and an officer of Mo Media, LLC ("Mo Media"). I am over the age of 18 and have personal knowledge of every statement contained in this declaration, and the same are true and correct.

2. I submit this declaration in further support of my Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue and Alternatively to Transfer the case to the Eastern District of Texas under 28 U.S.C. §1404(a).

3. I reside in Hardin County, Texas and have no personal business ties or activities in New York, as I explained in my initial declaration in support of my motion to dismiss or transfer.

4. I have reviewed the declaration of Sean Selinger, owner of Testing Technologies, Inc., dated February 24, 2008 ("Selinger Owens Decl."), which was filed in opposition to my motion to dismiss this action against me for lack of personal jurisdiction and improper venue, or to transfer the action to the Eastern District of Texas,

where I reside. I also read Sean Selinger's undated declaration in opposition to Mo Media's motion to dismiss for improper venue or to transfer ("Selinger Mo Media Decl.").

5. Both of Mr. Selinger's declarations referred to above contain inaccurate and misleading statements about the website at [www.testprepreview.com](http://www.testprepreview.com) and its relationship to Mo Media and to me, as explained below. I am advised by counsel that many of the statements in Mr. Selinger's declarations are hearsay and concern assertions as to which he is not competent to testify.

6. Plaintiffs' first amended complaint makes no reference at all to [www.testprepreview.com](http://www.testprepreview.com). That complaint asserts that various of Mo Media's websites contained allegedly false statements regarding Mo Media's test preparation products. Amend. Compl. ¶¶ 13-29.

7. Mr. Selinger's statements in his declarations regarding [www.testprepreview.com](http://www.testprepreview.com) have nothing to do with whether this Court has personal jurisdiction over me or is the proper forum for this case; they concern the merits of the disputes involved in this case. To the extent it is relevant to the motions to transfer, it supports transfer because it is owned and its content is created by residents of Texas, as explained below.

8. Neither Mo Media nor I are the owners of the website [www.testprepreview.com](http://www.testprepreview.com) and we did not create the content of that website. A review of that website shows that it provides information about numerous types of standardized tests, provides sample tests free of charge, and information about student loans, etc. Contrary to Mr. Selinger's assertion, this website does not offer any products or services for sale; it merely has links to numerous other websites where goods and services are

offered for sale, including, e.g., Kaplan and Princeton Review, leading test prep companies, as well as links to Mo Media's products. Users of the website [www.testprepreview.com](http://www.testprepreview.com) are not required to enter their email address or any other information to access the site. There are a few pages where a user may choose to enter email contact information in order to receive a free "question of the day" related to certain tests, but there are no such pages for the GMAT, GRE, or LSAT test materials or classes which plaintiffs offer and which are the only tests at issue in this case. Users of this website cannot make any purchases on the site; they may choose to click on a link to another site, where they may purchase goods or services.

9. The website [www.testprepreview.com](http://www.testprepreview.com) is owned by Enoch and Fay Morrison, as set forth in their complaint against Testing Technologies, Inc. filed on February 26, 2008 in the United States District Court for the Eastern District of Texas, which they filed after Sean Selinger, Testing Technologies' owner, threatened them with a lawsuit. A copy of the complaint in their action is attached as an exhibit to the accompanying declaration of Al J. Daniel, Jr., Esq.

10. Mr. Selinger's declarations mistakenly assert that I am or was the owner of the website [www.testprepreview.com](http://www.testprepreview.com), relying in large part on an arbitration decision of the National Arbitration Forum called Paul Owens v. LaPorte Holdings Inc., Claim No. FA0501000406994 (March 15, 2005), at <http://www.domainstatute.com/domain-name-disputes/naf3/406994.html>, in which I am listed as the Complainant. A true copy of that decision is attached as Exhibit A. The National Arbitration Forum resolves disputes regarding internet domain names. The only issue in that proceeding was whether the Respondent, which defaulted, had adopted a domain name that was confusingly similar

to [www.testprepreview.com](http://www.testprepreview.com). I filed and pursued the claim as agent for Enoch Morrison because I understand that the official "Registrant" is the only person who can file such a claim with the National Arbitration Forum.

11. I addressed Mr. Selinger's mistaken assumption in my deposition on February 28, 2008. I was the Claimant in the LaPort Holdings proceeding because I was the "Registrant" of the domain name [www.testprepreview.com](http://www.testprepreview.com), but neither Mo Media nor I developed the content on or owned this website. It was one of many domain names registered by Mo Media or me in the early days of our business development. At a certain point, Enoch Morrison contacted Mo Media about an idea for an informational site that he wished to develop, either directly, or through Test Publishing, Inc., a Texas company previously owned by him (which I understand is now inactive or dissolved). I was listed as the "Registrant" for the site due to a billing error when the domain was transferred from one internet registrar to another. The current registrant for this site is Domains by Proxy, Inc., a company which allows individuals and companies to maintain the privacy of their identities with regard to their registered domains and avoid receiving spam and other unsolicited communications. To the best of my knowledge, the owners of [www.testprepreview.com](http://www.testprepreview.com) are Enoch and Fay Morrison, as alleged in their complaint against TTI and Sean Selinger for declaratory and injunctive relief filed in the Eastern District of Texas.

12. Attached as Exhibit B is a true copy of my Second Amended Original Petition against Sean Selinger and Testing Technologies, Inc. in the District Court of Hardin County Texas, Cause No. 48147, for defamation and other causes of action. My Original Petition in that case was attached as Exhibit A to my declaration dated January

10, 2008. The Second Amended Original Petition corrects an error in the first sentence of Section IV on page 2 of the Original Petition which erroneously described me as owner and operator of www.testprepreview.com, rather than as the registrant for this domain. The error in the Original Petition resulted in a misunderstanding between me and my attorney in that case as to my relationship to that domain name.

13. Enoch and Fay Morrison's suit against Testing Technologies, Inc. filed in the Eastern District of Texas is the proper forum for resolution of Mr. Selinger's assertions regarding the content of www.testprepreview.com, not this case.

14. Plaintiff Testing Technologies took the depositions of Peter Morrison (the other co-owner of Mo Media) and me on February 28, 2008 in Beaumont, Texas. Neither MG Prep nor its attorney appeared at the deposition. Testing Technologies was represented at the deposition and we were questioned by its local Texas attorney who is representing it in my defamation action against it and Sean Selinger in Texas state court. I was not asked any questions regarding my connections or activities related to New York or to the allegedly false statements upon which the amended complaint is based.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 2008.

  
PAUL OWENS